


ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

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July 22, 2008

Via Facsimile: (212) 805-6382

The Honorable Victor Marrero
 United States District Judge
 Southern District of New York
 United States Courthouse - Suite 660
 500 Pearl Street
 New York, New York 10007

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Re: *Marichu Suarez Baoanan v. Lauro Liboon Baja, et al.*, 08-CV-5692 (VM)


Dear Judge Marrero:

We represent Plaintiff Marichu Suarez Baoanan in the above-referenced case and respectfully submit this letter in accordance with Rule I(A) of your Honor's Individual Practices. On July 15, 2008, Defendants Lauro Liboon Baja, Norma Castro Baja, Maria Elizabeth Baja Facundo, and Labaire International Travel, Inc. (collectively "Defendants") filed a Motion to Dismiss based almost entirely on the doctrine of diplomatic immunity. Under a section misleadingly entitled "FACTS NOT IN DISPUTE," Defendants claim that "[a]t all times material to this action, Defendant [Lauro Baja] was the Chief of Mission of the Permanent Missions of the Republic of the Philippines to the United Nations," and that "[Lauro Baja] is a 'diplomatic agent' as that phrase is defined under the Vienna Convention." In their Motion, Defendants also "request the Court to take judicial notice of this fact."

We submit that judicial notice of Defendants' alleged diplomatic status should not be taken. "In cases where questions of diplomatic immunity arise, the [U.S.] State Department often provides a formal certification that establishes the position held by a person and the level of immunity to which that person is entitled." *Ahmed v. Hoque*, 2002 U.S. Dist. LEXIS 14852 (S.D.N.Y. Aug. 14, 2002). Despite filing a Motion to Dismiss based almost entirely on the application of diplomatic immunity, Defendants present no certification from the U.S. State Department, the United Nations, or even the Republic of the Philippines as to such status in this case. Rather, Defendants request the Court to take judicial notice of certain "facts" based solely on a press release, a Google search, and the free online web encyclopedia, Wikipedia (*See Defs.' Mem. of Law* at 2-3). We respectfully submit that in the absence of certification of the diplomatic status of *each* of Defendants, it is inappropriate for this Court to consider a Motion to Dismiss predicated on such status, especially when such alleged status is based upon unreliable sources such as Wikipedia, which declares itself "the free encyclopedia that anyone can edit." *See* Wikipedia Home Page, <http://www.wikipedia.org> (follow "English") (emphasis supplied). Moreover, the additional arguments that Ms. Baja, Ms. Facundo, and Labaire make, particularly as to Ms. Facundo's immunity from suit and Labaire's derivative immunity, raise issues of fact that may not be appropriate for a Motion to Dismiss.

Accordingly we respectfully request that the Court enter an Order requiring Defendants to file official documentation pertaining to Defendant Lauro Baja's diplomatic status, including title and official dates of service, as well as the diplomatic status of Ms. Baja and Ms. Facundo as "members of the family" pursuant to the U.S. Department of State Circular Diplomatic Note of November 15, 1989, prior to requiring Plaintiff to respond to Defendants' Motion to Dismiss. Additionally, we respectfully request that the Court enter an Order staying Plaintiff's time to respond to Defendants' Motion to Dismiss until fifteen days after Defendants file and serve the required documentation.

Very truly yours,



Ivy O. Suriyopas, Esq.
Asian American Legal Defense and
Education Fund (AALDEF)

cc: Salvador E. Tuy, Attorney for Defendants, Prado & Tuy, LLP (via Facsimile and email)
Kenneth Kimerling, Co-Counsel for Plaintiff, AALDEF (via email)
Aaron Mendelsohn, Co-Counsel for Plaintiff, Troutman Sanders LLP (via email)

<i>Defendants are directed to respond by 7-25-08, by letter not to exceed two (2) pages, to the matters set forth above by plaintiff.</i>	
SO ORDERED: <i>2-22-08</i>	
DATE	VICTOR MARRERO, U.S.D.J.